



SUBMITTED TO THE
Investments and Pensions Oversight Committee
NM LEGISLATURE
SENATOR GEORGE MUNOZ, CHAIRMAN

House Bill 854 was part of a budget package that was supposed to cut school and state employee pay 1.5% for two years. The purpose was to increase workers' payments into their pension funds by 1.5%—and, not coincidentally, reduce by 1.5% what the state pays into those same pension funds.

It unfairly targeted a particular group of workers for a pay cut, and took money directly out of the pockets of New Mexico families.

It also violated the New Mexico Constitution.

HB 854 increased the amount of money that employees who terminate employment before retirement can withdraw from the fund.

This violated Article XX, Sec. 22, which states that the Legislature "shall not enact any law that increases the benefits paid by the system in any manner or changes the funding formula for a retirement plan unless adequate funding is provided."

In addition, any law that "shall be construed to prohibit modifications to retirement plans that enhance or preserve the actuarial soundness" of an affected plan is also a no-go, constitutionally.

HB 854 failed on both these counts. New Mexico workers cannot continue with HB 854 legislation. Further, the bill is still the subject of pending litigation.

"The existing 1.5 percent contribution swap is the subject of pending litigation in the Second Judicial District Court in the matter of AFSCME Council 18 et. al. vs. State of New Mexico, et. al, Case No. CV-2009-7148. The AOAG provides the following analysis regarding the potential impact pursuant to this case:

There is a pending lawsuit stemming from the passage in 2009 of HB 854, which introduced the first 1.5% contribution shift. The State district court presiding over the case has dismissed nearly all of the claims raised by the plaintiffs, but the plaintiffs' takings claim has survived. Importantly, if the plaintiffs are successful on that claim, they would be entitled to the payment of damages as compensation for the taking. What this means for the State is that it might have to pay to all people employed by the State between 2009 and 2011 (or any portion thereof) the difference between what those employees actually paid into their retirement accounts pursuant to HB 854 and what they would have paid if HB 854 had not passed. In other words, a damage award would erase any savings the State realized from the passage of HB 854. Such an award would also establish sufficient precedent to entitle State employees to the same type of award from the increased contribution shift that SB 248 mandates PERA notes that its board opposes bills that contain contribution shifts: "The PERA Board Resolution No. 11-02 specifically establishes the PERA Board's opposition to any legislation proposing

statutory contribution rate swaps between employers and employees that do not comply with the Board's Benefit Policy and Contribution Policy adopted in 2008. Such bills are a budget measure to save General Fund monies; conversely, it will have a negative impact on the solvency of the PERA, JRA and MRA Funds."

AFT NM proposes the repeal of this law and asks that the 1.5% pension contribution that employees are currently making for the state now stop being deducted and that the state pay its fair share of the employer portion of the fund.

Respectfully Submitted,

Christine Trujillo, President, AFT NM

*INFORMATION: HB 854, PERA MEMBER & STATE CONTRIBUTION CHANGES
Sponsor: Henry Kiki Saavedra (D)*

*AN ACT RELATING TO THE RETIREMENT OF PUBLIC EMPLOYEES; PROVIDING
A TEMPORARY INCREASE IN THE EMPLOYEE CONTRIBUTION RATES AND
A CORRESPONDING TEMPORARY DECREASE IN THE
EMPLOYER CONTRIBUTION RATES.*